

# Exhibit 16

**HEARING**  
***IN RE: CORE SCIENTIFIC, INC.,***  
***ET AL.***

August 7, 2023

Provider shall be Customer's exclusive provider of any and all management services for all blockchain and cryptocurrency-related operations including but not limited to services relating to all mining equipment owned, purchased, leased, operated, or otherwise controlled by Customer and/or its subsidiaries and/or affiliates at any location (collectively, the "**Services**") unless the Agreement is terminated by Customer as per Term/Termination below.

Sphere-Gryphon BTS  
Dated August 19, 2021

# MASTER SERVICES AGREEMENT ORDER #2

This Order, including the terms and conditions hereunder, incorporates by reference the terms of the Master Services Agreement dated as of September 12, 2021 (the “**Agreement**”) between Company and Client (as defined below). If any terms of this Order conflict with the terms of the Agreement, the terms of this Order shall govern with respect to this Order. Capitalized terms used but not defined in this Order shall have the meanings ascribed in the Agreement.

**Commencement Date:**

As of September 24, 2021 and then the fifteenth of every remaining month beginning with October 15, 2021 until November 15, 2022, respectively.

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# MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) effective as of September 12, 2021 (“**Effective Date**”) is between CORE SCIENTIFIC, INC. (“**Company**”) and GRYPHON DIGITAL MINING, INC. (“**Client**”).

**WHEREAS**, Client desires access to locate its Client Equipment (as defined below) at the Company Facility (as defined below) and receive certain Services (as defined below); and

**WHEREAS**, Company desires to provide such Services at its Company Facility.

The parties agree as follows:

Environ Monit Assess (2008) 142:171–180

2. All amounts payable to companies under this Act shall be paid to the companies in the manner and at the times specified in the certificate of incorporation of the company, and the amounts shall be paid to the companies in the manner and at the times specified in the certificate of incorporation of the company, and the amounts shall be paid to the companies in the manner and at the times specified in the certificate of incorporation of the company.

4. ITIMU, HOGUEN, A H (DN. VII) D H I (C. YTH) S. S. N D. S. U. S. P. H. S. I. O. N.

a. This Agreement commences on the 15<sup>th</sup> day of May, 2006 and shall remain in force until the 15<sup>th</sup> day of May, 2007.

<sup>1</sup> "United Nations," *United Nations*, accessed on the Internet at <http://www.un.org/>.

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[illegible]

2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 26

[illegible]

10. *Journal of the American Statistical Association*, 1977, 72, 1101

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c. In addition to the responses to the question 'What are the most important things you do?', I asked them to answer the question 'What are the most important things you do not do?' and to explain their responses.

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$$\hat{D}^{\alpha} = \frac{1}{\Gamma(\alpha)} \int_0^\infty \frac{f(t) - f(0)}{t^{1-\alpha}} dt$$

1.  $\mathcal{A}$  is a  $\mathbb{C}$ -algebra.  
 2.  $\mathcal{A}$  is a  $\mathbb{C}$ -algebra.  
 3.  $\mathcal{A}$  is a  $\mathbb{C}$ -algebra.

508 *Journal of Interpersonal Violence 26(3)*

[illegible]

<sup>a</sup> Data were taken from the following sources:

United Companies are prohibited from spreading U.S. dollars and that the beneficiaries of the proceeds of

2004, 2005). Indeed, one can see that the subject of U.S. expansion is full of paradoxes, given that the United States has been the center of a culture's quest for, with regard to and concern for,

entrepreneurial behavior is a function of the individual's characteristics, the situation, and the interaction between the two. The model is based on the following assumptions:

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10.  $\lim_{x \rightarrow 0} \frac{1}{x} = \infty$  because for any  $M > 0$ , we can choose  $\delta = \frac{1}{M}$  such that if  $0 < |x| < \delta$ , then  $\frac{1}{x} > M$ .

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1. **Q** MGA

### Phon-Core MSA

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ted September 12, 2021

ated September 12, 2021

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# SPHERE-GRYPHON DELEGATION AGREEMENT DATED OCTOBER 5, 2021

1. Sub-License and Delegation. Gryphon hereby (i) exclusively sub-licenses to Sphere its rights to access and use the Company Facility pursuant to Order 2 and (ii) delegates to Sphere all of its obligations to make payments to Core pursuant to Order 2. Sphere hereby accepts such sub-license and delegation in all respects.

## PER-LICENSE AND DELEGATION

This Sub-License and Delegation Agreement (the "SLDA") is entered into by and between Gryphon Digital Media ("Gryphon") and Sphere ID Corp ("Sphere") (the "SLDA"), and enters into that certain Services Agreement by and between Core Scientific, Inc. ("Core") and Gryphon (the "MSA"), attached hereto as Exhibit A, and without delinquency shall have the savings assigned to the

WHEREAS, Section 8.4 of the MSA, as amended, provides that Gryphon is permitted to sub-license, sub-lease, assign, delegate or transfer all or any of its rights and obligations thereunder to Sphere without the prior written consent of Core; and

WHEREAS, Gryphon desires to sub-license or delegate to Sphere its rights and obligations under Order 2 to Sphere as set forth herein;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Sub-License and Delegation. Gryphon hereby (i) exclusively sub-licenses to Sphere its right to access and use the Company Facility pursuant to Order 2 and (ii) delegates to Sphere all of its obligations to make payments to Core pursuant to Order 2. Sphere hereby accepts such sub-license and delegation in all respects.

2. Contingent Assignment. Effective immediately upon the consummation of the Merger (as defined in the Merger Agreement and Plan of Merger, dated as of June 1, 2021, by and among Sphere, Sphere ID Corp and Gryphon, as amended from time to time (the "Merger Agreement")), all of Gryphon's rights and obligations under Order 2 shall be automatically assigned to, and assumed by, the Surviving Corporation (as defined in the Merger Agreement), without any further action required by either party.

3. Termination. This Agreement shall automatically terminate upon the termination of the MSA and/or Order 2 in accordance with their respective terms. In addition, upon any termination of the Merger Agreement by Sphere, Gryphon shall have the right, in its sole discretion, to terminate this Agreement as its entirety (including the sub-license and delegation described in Section 1) upon not less than one hundred and eighty (180) calendar days' written notice to Sphere.

4. Governing Law. This Agreement shall be construed in accordance with and governed by the Laws of the State of Delaware without giving effect to the principles of conflict of laws.

5. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior or contemporaneous discussions, negotiations, proposals, understandings and agreements, written or oral, as well as any industry custom. Each party acknowledges that in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in this Agreement. This Agreement may be executed in two (2) or more counterparts, and the signature pages may be delivered with all or electronic signatures or by e-mail, each will be deemed an original, but all together will constitute one and the same instrument. This Agreement may be amended only by the written agreement of both parties.

Gryphon Core Order #2  
Dated October 5, 2021

# CORE'S PURPORTED REQUIREMENTS

8. Order #2 amended Section 8.d. of the MSA to permit Gryphon to assign its rights under the Agreements to Sphere without Core's written consent, but only if Sphere satisfies Core's requirements prior to any assignment of Gryphon's rights. These requirements would have included, among other things: creditworthiness, Foreign Corrupt Practices Act considerations; Know Your Customer considerations (*e.g.*, business with Chinese entities/Chinese government); form of assignment (*e.g.*, how and which rights and obligations were transferred, allocated or retained); whether any such assignment would implicate securities laws or constitute an investment contract; and whether any assignment would impact Core's own rights and obligations under the Gryphon Hosting Agreements.

## II. Satisfaction of Core's Requirements

7. At no time has Core entered into any agreements with Sphere for the hosting of names or otherwise.

8. Order #2 amended Section 8.d. of the MSA to permit Gryphon to assign its rights under the Agreements to Sphere without Core's written consent, but only if Sphere satisfies Core's requirements prior to any assignment of Gryphon's rights. These requirements would have included, among other things: creditworthiness, Foreign Corrupt Practices Act considerations; Know Your Customer considerations (*e.g.*, business with Chinese entities/Chinese government); form of assignment (*e.g.*, how and which rights and obligations were transferred, allocated or retained); whether any such assignment would implicate securities laws or constitute an investment contract; and whether any assignment would impact Core's own rights and obligations under the Gryphon Hosting Agreements.

9. To date, Sphere has not satisfied Core's requirements in connection with any assignment to Sphere of Gryphon's rights or obligations under the Agreements.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: June 9, 2023  
Austin, Texas

By: /s/ Russell Cann  
Russell Cann



# CORE'S CEO ADMITS THAT THE PARTIES HAD A CONTRACTUAL RELATIONSHIP

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### III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

6. On or around April 7, 2022, I had a meeting with Core's then-CEO Mike Levitt at the Setai hotel in Miami, Florida, to discuss the state of affairs between Sphere and Core, including that Core had not accepted Sphere's miners for hosting despite requesting Sphere to continue making deposit payments. During that meeting, Mr. Levitt acknowledged that Sphere and Core were in a contractual relationship. Mr. Levitt stated that Sphere was one of Core's largest customers and that the relationship was important to him.

### III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

5. In or around April 2022, Sphere's CEO Patricia Trompeter had a meeting with Core's then-CEO Mike Levitt in Florida. I joined part of the meeting by phone. During that meeting, Mr. Levitt characterized Sphere as Core's "customer" and indicated the parties were in a contractual relationship. Mr. Levitt also indicated that he would like to increase communications between Sphere and Core.

4. Gryphon interacted with Core, on Sphere's and Core's space for Sphere's cryptocurrency miners. On October 5, 2021, Gryphon and Sphere's manager, entered into Order #2, which is attached as Exhibit 4.

5. On October 5, 2021, Gryphon and Sphere entered into a Delegation Agreement, which is attached as Exhibit 4.

III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

6. On or around April 7, 2022, I had a meeting with Core's then-CEO Mike Levitt at the Setai hotel in Miami, Florida, to discuss the state of affairs between Sphere and Core, including that Core had not accepted Sphere's miners for hosting despite requesting Sphere to continue making deposit payments. During that meeting, Mr. Levitt acknowledged that Sphere and Core were in a contractual relationship. Mr. Levitt stated that Sphere was one of Core's largest customers and that the relationship was important to him.

IV. CORE ADMITTED THAT IT USED SPHERE'S MINERS FOR HOSTING DESPITE REQUESTING SPHERE TO CONTINUE MAKING DEPOSIT PAYMENTS

7. In or around April 2022, Core representatives claimed that Core had not accepted Sphere's miners for hosting despite requesting Sphere to continue making deposit payments. During that meeting, Mr. Levitt acknowledged that Sphere and Core were in a contractual relationship. Mr. Levitt stated that Sphere was one of Core's largest customers and that the relationship was important to him.

V. SPHERE PAID THE \$35.1 MILLION DEPOSIT TO CORE

8. On July 27, 2022, Brian Chase, Gryphon's CFO, in a letter to Core, conclusively affirmed that Sphere "is the sole source and beneficiary of the funds paid to Core Scientific Inc." and

3. In or around April 2022, Sphere's CEO Patricia Trompeter had a meeting with Core's then-CEO Mike Levitt in Florida. I joined part of the meeting by phone. During that meeting, Mr. Levitt characterized Sphere as Core's "customer" and indicated the parties were in a contractual relationship. Mr. Levitt also indicated that he would like to increase communications between Sphere and Core.

4. Based on my review of Exhibit 2 at the time, I understood that Core signed off on the press release describing the Delegation Agreement.

III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

5. In or around April 2022, Sphere's CEO Patricia Trompeter had a meeting with Core's then-CEO Mike Levitt in Florida. I joined part of the meeting by phone. During that meeting, Mr. Levitt characterized Sphere as Core's "customer" and indicated the parties were in a contractual relationship. Mr. Levitt also indicated that he would like to increase communications between Sphere and Core.

Executed on: July 7, 2023

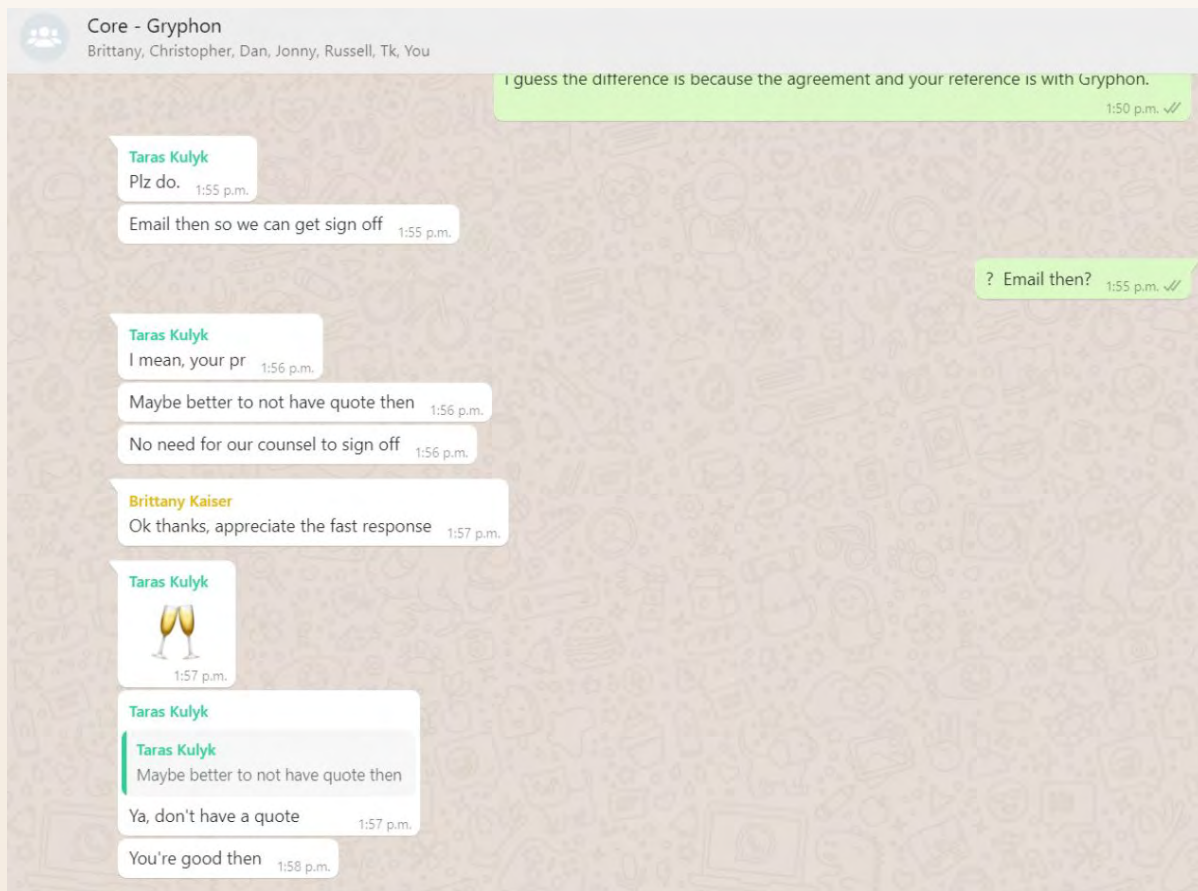
/s/ Peter Tassioupolos  
Peter Tassioupolos

Declaration of Patricia Trompeter  
Dated July 7, 2023

Declaration of Peter Tassioupolos  
Dated July 7, 2023

# CORE APPROVES DISCLOSURE OF DELEGATION AGREEMENT

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Core Text Thread  
Dated October 12, 2021

## Sphere 3D and Gryphon Secure Largest Single Hosting Services Deal in Core Scientific's History

228 MW hosting agreement is largest in Core Scientific's history, with an estimated capacity of 71,000 miners

Toronto, Ontario, October 13, 2021 - Sphere 3D Corp. (Nasdaq: ANY) ("Sphere 3D" or the "Company"), a company delivering containerization, virtualization, and data management solutions, is pleased to announce that it has entered into an agreement with Gryphon Digital Mining<sup>1</sup> ("Gryphon") for approximately 230 MW of carbon neutral bitcoin mining hosting capacity to be managed by Core Scientific ("Core") as hosting partner. This hosting agreement is the single largest order in Core's history and represents yet another step forward for Sphere 3D and Gryphon in becoming the world's largest carbon neutral bitcoin miner.

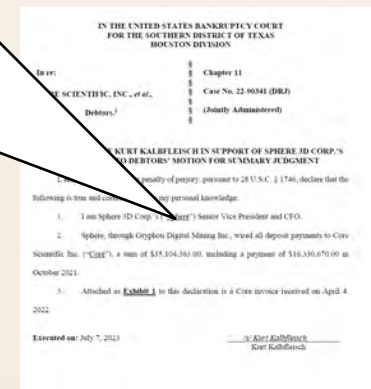
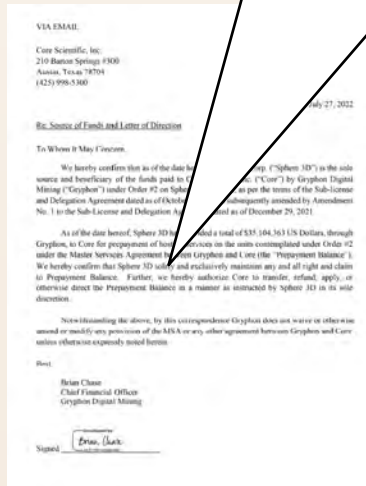


Sphere Press Release  
Dated October 13, 2021

# GRYPHON CONFIRMS SPHERE HAS ALL RIGHTS TO THE DEPOSIT FUNDS

As of the date hereof, Sphere 3D has provided a total of \$35,104,363 US Dollars, through Gryphon, to Core for prepayment of hosting services on the units contemplated under Order #2 under the Master Services Agreement between Gryphon and Core (the "Prepayment Balance"). **We hereby confirm that Sphere 3D solely and exclusively maintains any and all right and claim to Prepayment Balance.** Further, we hereby authorize Core to transfer, refund, apply, or otherwise direct the Prepayment Balance in a manner as instructed by Sphere 3D in its sole discretion.

2. Sphere, through Gryphon Digital Mining Inc., wired all deposit payments to Core Scientific Inc. ("Core"), a sum of \$35,104,363.00, including a payment of \$16,330,670.00 in October 2021.



# DELAWARE DOES NOT LIMIT LIABILITY FOR INTENTIONAL TORTS OR CONTRACTUAL BAD FAITH

## B. As A Matter Of Public Policy, Core's Liability Cannot Be Limited For Acts Of Intentional Misconduct Or Bad Faith

45. Like other jurisdictions, Delaware courts generally permit parties to limit or eliminate liability for acts committed before a contract is entered into, but will not as a matter of public policy permit parties to prospectively limit their liability for intentional acts or acts of bad faith committed after contract execution. *See New Enter. Assocs. 14, L.P. v. Rich*, No. 2022-0406- JTL, 2023 WL 3195927, at \*8. 52–54 (Del. Ch. May 2, 2023) (observing that “extant decisions hold that a provision in a commercial contract cannot eliminate tort liability for intentional or reckless conduct” and distinguishing Delaware decisions that have permitted a party entering into a contract to disclaim liability for pre-contract extracontractual fraud through non-reliance provisions); *Data Mgmt. Internationale, Inc. v. Saraga*, No. CIV.A. 05C-05-108, 2007 WL 2142848, at \*5 & n.41 (Del. Super. Ct. July 25, 2007) (collecting authority and observing that if the contract “expressed an unambiguous intent to relieve [defendant] of liability for his own intentional torts, it is exceedingly doubtful that such a provision would be enforceable as a matter of public policy”); *James v. Getty Oil Co. (E. Operations)*, 472 A.2d 33, 38 (Del. Super. Ct. 1983) (“to the extent that paragraph 6 seeks to indemnify [the defendant] against its willful acts, as opposed to its negligence, the agreement is void and unenforceable”); 8 Williston on Contracts § 19:24 (4th ed.) (“An attempted exemption from liability for a future intentional tort . . . or for a future willful or grossly negligent act is generally held void.” (footnotes omitted)).

46. Sphere asserts in its Proofs of Claim that Core is liable to it based on its intentional acts, including for the tort of conversion, namely, for Core wrongfully seizing Sphere’s Deposit and other digital assets generated for the benefit of Sphere. No limitation of liability can apply to such claims. *See Saraga*, 2007 WL 2142848, at \*5 & n.41 (citing *I.C.C. Metals, Inc. v. Municipal Warehouse Co.*, 409 N.E.2d 849, 853 (N.Y. 1980) (“Although public policy will in many situations countenance voluntary prior limitations upon that liability which the law would otherwise impose upon one who acts carelessly . . . such prior limitations may not properly be applied so as to diminish one’s liability for injuries resulting from an affirmative and intentional act of misconduct. . . such as a conversion. Any other rule would encourage wrongdoing by allowing the converter to retain the difference between the value of the converted property and the limited amount of liability. . . . That result would be absurd.”).); *accord Solis v. Evins*, 951 S.W.2d 44, 50 (Tex. App.—Corpus Christi 1997) (“We find no authority for the proposition that a party may prospectively contractually exculpate itself with respect to intentional torts. That would be contrary to public policy.”).

dismiss and motions for summary judgment.” *Gabreels Tech. Sol.*, 2018 WL 1111111 (collecting cases).

44. In *Data Center*, the court noted that it had been “unable to find a Delaware court endorsing a purported limitation on damages upon a contract.” WL 9464503, at \*5. That is functionally the case here, where Core judgment before the parties have taken any discovery, and the deadline for Sphere to file its response to the Claim Objections—on the applicability of limitations of liability provisions in the contract. This Court should follow the well-settled rule that federal courts applying Delaware law and reject Core’s request for judgment on the limitations of liability provisions out of hand.

B. As A Matter Of Public Policy, Core’s Liability Cannot Be Limited For Acts Of Intentional Misconduct Or Bad Faith

45. Like other jurisdictions, Delaware courts generally permit parties to limit or eliminate liability for acts committed before a contract is entered into, but will not as a matter of public policy permit parties to prospectively limit their liability for intentional acts or acts of bad faith committed after contract execution. *See New Enter. Assocs. 14, L.P. v. Rich*, No. 2022-0406- JTL, 2023 WL 3195927, at \*8. 52–54 (Del. Ch. May 2, 2023) (observing that “extant decisions hold that a provision in a commercial contract cannot eliminate tort liability for intentional or reckless conduct” and distinguishing Delaware decisions that have permitted a party entering into a contract to disclaim liability for pre-contract extracontractual fraud through non-reliance provisions); *Data Mgmt. Internationale, Inc. v. Saraga*, No. CIV.A. 05C-05-108, 2007 WL 2142848, at \*5 & n.41 (Del. Super. Ct. July 25, 2007) (collecting authority and observing that if the contract “expressed an unambiguous intent to relieve [defendant] of liability for his own



# PETROLEUM ADDRESSED A MATERIALLY SIMILAR LIMITATION OF LIABILITY

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“The 2005 and 2011 Agreements each contain provisions waiving the parties' rights to recover lost profits, lost business opportunities, or other indirect, special, incidental, punitive, or consequential damages in connection with this Agreement.”

*Petroleum v. Magellan Terminals Holdings, L.P.*, 2015 WL 3885947, at \*22 (Del. Super. Ct. June 23, 2015) (internal quotation marks omitted).

c. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF REVENUES (EXCEPT THAT CLIENT SHALL BE LIABLE FOR ANY FEES OR OTHER AMOUNTS OWED TO COMPANY UNDER THIS AGREEMENT); (IV) LOSS, INTERRUPTION OR USE OF DATA OR LOSS OF USE OF CLIENT EQUIPMENT; (V) ANY CONSEQUENTIAL OR INDIRECT DAMAGES; OR (VI) COST OF COVER, ANY INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES (IF APPLICABLE), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

COMPANY'S TOTAL LIABILITY TO CLIENT IN THE AGGREGATE FOR THE ENTIRE TERM (REGARDLESS OF WHETHER THE CLAIMS ARE BROUGHT DURING OR AFTER THE TERM) WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES) WILL NOT EXCEED AN AMOUNT EQUAL TO ONE (1) MONTHS FEE PAYABLE TO COMPANY PURSUANT TO THE APPLICABLE ORDER.

4. EXCEPT FOR CLIENT'S BREACH OF ITS OBLIGATIONS UNDER SECTIONS 4.3 & 5.4 AND 4.5 AND LOSS OR DAMAGE ARISING OUT OF CLIENT'S GROSS NEGLIGENCE, NEGLIGENCE OR WILLFUL MISCONDUCT, THE LIMITATIONS SET FORTH IN SECTIONS 1 & 5.4 WILL APPLY TO ALL CLAIMS AND CAUSES OF ACTION, REGARDLESS OF WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE.

5. Client hereby waives the right to bring any claim against Company arising out of or in any way relating to or from any claim that one (1) year after the date such claim accrues is time-barred. Each party recognizes and agrees that the necessary documentation, limitations of liability and remedy limitations in this Agreement are reasonably required by the parties.

6. Client acknowledges that representation prior agreement, correspondence, electronic and legal and regulatory risks could have a material adverse impact on representation, correspondence using Client Equipment, services, and this Agreement. Client assumes responsibility for all such risks, and Company disclaims all type of liability or loss of funds that may arise as a result.

7. Client shall indemnify, defend and hold harmless Company and its affiliates, subsidiaries, divisions, offices, employees, subcontractors and service firms and agents any claims, liabilities, damages, costs and expenses (including, without limitation, reasonable attorney's fees) arising from or relating to (i) death, personal injury, bodily injury or property damage caused by Client or Client's equipment or services or Client Equipment; (ii) breach of Client's representation, warranty, or contract in this Agreement as to its Client's equipment; (iii) loss of Client's, and its, equipment or willful or negligent conduct as to Client or Client's equipment or services; (iv) Client's or Client's equipment or client's use of the Company's Facility, Services, or Client Equipment; (v) any claim whatsoever as to Client's equipment or services, as well as third party claims to the Service or Client Equipment; (vi) any change in, or interruption or discontinuation of, any time, equipment, services, system, product, information, data or data, as well as any other equipment, change in, or interruption or discontinuation of the foregoing, or (vii) Client's violation or use of any non-licensed software or hardware or connection with the Client Equipment.

#### 4. CONFIDENTIAL INFORMATION

5. Each party acknowledges that it and its employees, or agents, may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information which is proprietary to or confidential to the other party, including, without limitation, technical data, designs, formulas and processes and information about business operations, systems, systems, business, costs, performance, personnel, strategies, internal and other confidential information, and personnel, equipment and supplies (collectively, "Confidential Information"). Company's Confidential Information also includes the design, address and location of the Company's Facility (which is deemed to be a public location), the Service, products, equipment used at the Company's Facility, the configuration of all units, terminals and services at the Company's Facility and the terms of this Agreement. Neither party may use or copy any Confidential Information except to the limited extent necessary to perform its obligations under this Agreement and will not disclose any Confidential Information to any person or entity other than to its employees who have need to know the Confidential Information as or otherwise expressly permitted by this Agreement. Each party shall use the same measures that it uses to protect its own most confidential and proprietary information to protect the Confidential Information from use or disclosure in violation of this Agreement, but in no event

## *PETROLEUM HOLDING ON* CONTRACTUAL BAD FAITH

“The case law from the Superior Court carves out an exception for bad faith breaches of contract in specific instances. . . . It is undisputed that parties cannot absolve themselves for their own conduct amounting to fraud. However, as to claims that fall somewhere short of fraud, such as claims for bad faith, the Court must undergo a factual analysis that is premature on summary judgment.”

*Petroleum v. Magellan Terminals Holdings, L.P.*, 2015 WL 3885947, at \*24 (Del. Super. Ct. June 23, 2015)

# CORE MISSTATES *J.A. JONES*

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33. Sphere also cites *J.A. Jones*, in which the court held that a limitation of liability provision could not limit exposure for tort liability unless the intent to do so was “stated clearly and unequivocally.”

“The case law from the Superior Court carves out an exception for bad faith breaches of contract in specific instances. For example, in *J.A. Jones Const. Co. v. City of Dover*, 372 A.2d 540, in the context of interpreting a construction contract provision that did not specifically carve out an exception for bad faith, the Court observed that [e]ven if a contract purports to give a general exoneration from damages, it will not protect a party from a claim involving its own fraud or bad faith.”

*Petroleum v. Magellan Terminals Holdings, L.P.*, 2015 WL 3885947, at \*23 (Del. Super. Ct. June 23, 2015) (internal quotation marks omitted).

Even taking its allegations as true, which Core does not dispute, Sphere's claim is not a breach of contract claim that is expressly subject to the Limitation of Liability Provision. 32. The cases that Sphere relies upon to support its efforts to avoid application of the Limitation of Liability Provision are *Petroleum v. Magellan Terminals Holdings, L.P.*, C.A. No. 2015 WL 3885947, at \*24 (Del. Super. Ct. June 23, 2015), purportedly holding that limitation of liability provisions are not enforceable in cases of intentional misconduct. But *Magellan* does not stand for this general proposition. In *Magellan*, the court held that defendant's agent, to induce him to execute the contract, made false statements to plaintiff. 2015 WL3885947, at \*3. At no point does Sphere allege that Core induced Sphere (or Geopline) to execute the MSA. 33. Sphere also cites *J.A. Jones Const. Co. v. City of Dover*, 372 A.2d 540, 546 (Del. Super. Ct. 1977), *see also Data Mgmt. International, Inc. v. Saraga*, C.A. No. 05C-05-108, 2007 WL 2142848, at \*4-5 (Del. Super. Ct. July 25, 2007). It does not stand for the proposition that a limitation of liability provision cannot limit exposure for bad faith breach or breaches of the implied covenant of good faith and fair dealing. Instead, because the court allowed plaintiff's claims to proceed only to the extent they fell outside the scope of the limitation of liability, *J.A. Jones* follows Delaware courts' general reluctance to invalidate limitations of liability provisions. Here, as noted, the Limitations of Liability Provisions in the MSA are broad and clearly, expressly and unequivocally cover all claims, whether in contract, tort, or otherwise.

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# OTHER JURISDICTIONS DO NOT LIMIT CONTRACTUAL BAD FAITH

“Generally, a contractual provision exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy. We think the same may be said of contract liability. To conclude otherwise would incentivize wrongful conduct and damage contractual relations. This conclusion is supported by lower court decisions in Texas and court decisions in at least 28 American jurisdictions. We join this overwhelming consensus.”

*Zachry Const. Corp. v. Port of Houston Auth. of Harris Cnty.*, 449 S.W.3d 98, 116 (Tex. 2014) (cleaned up).

“New Hampshire would adopt the rule that limitations clauses are unenforceable by a party that has acted in bad faith” and collecting cases for the proposition that numerous courts across the U.S. have applied this rule to breach claims for “bad faith” in “contract performance.”

*Vermont Telephone Co., Inc. v. FirstLight Fiber, Inc.*, 2022 WL 19236267, at \*5 (N.H. Super. Jan. 14, 2022).

“As a matter of public policy, a party should not benefit from a bargain it performed in bad faith. Accordingly, in the absence of any contrary argument or authority, we adopt this sensible rule.”

*Airfreight Exp. Ltd v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 111 (Ct. App. 2007) (collecting cases).



# CORE STATED IT USED SPHERE'S MINERS FOR ITS OWN BENEFIT

## IV. CORE ADMITTED THAT IT USED SPHERE'S MINERS FOR ITS OWN BENEFIT AND SAID IT HAD COMPENSATED SPHERE, BUT NEVER DID

7. In or around April 2022, Core representatives claimed to me that Core had installed approximately 297 of Sphere's miners for Core's own benefit and used those miners to mine bitcoin for Core's own account, which Core claimed was an accident. Core EVP Russell Cann apologized and informed me that Core had compensated Sphere by "pointing extra hash" from Core's miners to Sphere's wallet "for a couple of weeks," meaning that Core had used its proprietary miners to mine bitcoin for Sphere's benefit. As it turned out, Core never did.

4. Gryphon negotiated with Core, on Sphere's behalf, to secure hosting, colocation, and rack space for Sphere's cryptocurrency miners. On October 5, 2021, Core and Gryphon, acting as Sphere's manager, entered into Order #2, which is attached as Exhibit 2.

5. On October 5, 2021, Gryphon and Sphere entered into the Sub-License And Delegation Agreement, which is attached as Exhibit 4.

III. CORE'S THEN-CEO MIKE LEVITT AFFIRMED THAT SPHERE AND CORE WERE IN A CONTRACTUAL RELATIONSHIP

6. On or around April 7, 2022, I had a meeting with Core's then-CEO Mike Levitt at the Seta hotel in Miami, Florida, to discuss the state of affairs between Sphere and Core, including that Core had not accepted Sphere's miners for hosting despite requesting Sphere to continue making deposit payments. During that meeting, Mr. Levitt acknowledged that Sphere and Core were in a contractual relationship. Mr. Levitt stated that Sphere was one of Core's largest customers and that the relationship was important to him.

IV. CORE ADMITTED THAT IT USED SPHERE'S MINERS FOR ITS OWN BENEFIT AND SAID IT HAD COMPENSATED SPHERE, BUT NEVER DID

7. In or around April 2022, Core representatives claimed to me that Core had installed approximately 297 of Sphere's miners for Core's own benefit and used those miners to mine bitcoin for Core's own account, which Core claimed was an accident. Core EVP Russell Cann apologized and informed me that Core had compensated Sphere by "pointing extra hash" from Core's miners to Sphere's wallet "for a couple of weeks," meaning that Core had used its proprietary miners to mine bitcoin for Sphere's benefit. As it turned out, Core never did.

V. SPHERE PAID THE \$35.1 MILLION DEPOSIT TO CORE, WHICH GRYPHON ACKNOWLEDGED

8. On July 27, 2022, Brian Chase, Gryphon's CFO, in a letter, conclusively affirmed that Sphere "is the sole source and beneficiary of the funds paid to Core Scientific Inc." and

# FRAUD BOOTSTRAPPING IS INAPPLICABLE BECAUSE NO FRAUD IS ALLEGED

attempts pursuant to the “anti-bootstrapping rule.” “[A] plaintiff cannot bootstrap a claim of breach of contract into a claim of fraud merely by alleging that a contracting party never intended to perform its obligations.” *DecisivEdge, LLC v. VNU Grp., LLC*, C.A. No. N17C-05-584 WCC CCLD, 2018 WL 1448755, at \*8 (Del. Super. Ct. Mar. 19, 2018) (citing *Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at \*8 (Del. Super. Ct. Apr. 16, 2014)) (internal quotations omitted). “[A] fraud claim alleged contemporaneously with a breach of contract claim” will therefore survive only if “the claim is based on conduct that is separate and distinct from the conduct constituting breach.” *Id.* (citations omitted). Because Sphere is attempting to shroud its breach of contract claims in the

34. In short, none of the cases that Sphere cites in the Sphere Objections supports the argument that a breach of contract, even if intentional, invalidates the Limitations Provisions.

(2) The Anti-Bootstrapping Rule Also Prevents Fraud Claims

35. Sphere’s arguments also fail under the “anti-bootstrapping rule.” Sphere’s arguments further demonstrate that Delaware courts vigorously reject attempts to bootstrap claims of liability provisions. Under the rule, if a party tries to add a conclusion of fraud or bad faith to disguise an ordinary breach of contract claim, usually to avoid a limitation of liability provision that does not expressly extend to fraud or tort claims, Delaware courts routinely reject those attempts pursuant to the “anti-bootstrapping rule.” “[A] plaintiff cannot bootstrap a claim of breach of contract into a claim of fraud merely by alleging that a contracting party never intended to perform its obligations.” *DecisivEdge, LLC v. VNU Grp., LLC*, C.A. No. N17C-05-584 WCC CCLD, 2018 WL 1448755, at \*8 (Del. Super. Ct. Mar. 19, 2018) (citing *Furnari v. Wallpang, Inc.*, 2014 WL 1678419, at \*8 (Del. Super. Ct. Apr. 16, 2014)) (internal quotations omitted). “[A] fraud claim alleged contemporaneously with a breach of contract claim” will therefore survive only if “the claim is based on conduct that is separate and distinct from the conduct constituting breach.” *Id.* (citations omitted). Because Sphere is attempting to shroud its breach of contract claims in the language of bad faith, it cannot defeat application of the Limitations of Liability Provisions.

COMPANY'S TOTAL LIABILITY TO CLIENT IN THE AGGREGATE SHALL NOT EXCEED THE AMOUNT OF THE FEE (REGARDLESS OF WHETHER THE CLAIMS ARE BROUGHT BY OR FOR THE BENEFIT OF THE CLIENT) WITH RESPECT TO ALL CLAIMS ARISING FROM OR OUT OF THE MATTER OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, THE FEE WILL NOT EXCEED AN AMOUNT EQUAL TO ONE (1) MONTH OF THE FEE TO COMPANY PURSUANT TO THE APPLICABLE ORDER.

\* EXCEPT FOR CLIENT'S BREACH OF OBLIGATIONS UNDER SECTIONS 4.3, 4.4 AND 4.5 AND LOSS OR DAMAGE ARISING OUT OF CLIENT'S GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT, THE LIMITATIONS SET FORTH IN SECTIONS 5.1 AND 5.4 WILL APPLY TO ALL CLAIMS AND CAUSES OF ACTION, REGARDLESS OF WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

*If Client hereby waives the right to bring any claim against Company arising out of or in any way relating to an Order more than one (1) year after the date such Order expires or is terminated. Each party recognizes and agrees that the warranty disclaimer, limitation of liability and remedy limitations in this Agreement are materially bargained for by the parties.*

g. Client acknowledges that cryptocurrency price movement, cryptocurrency difficulty, and legal and regulatory risks could have a material adverse impact on cryptocurrencies, cryptocurrency mining, Client Equipment, Services, and this Agreement. Client assumes responsibility for all such risks, and Company disclaims all types of liabilities or loss of funds that may arise as a result.

ii) A Client shall neither defend nor hold harmless Company and its affiliates, subsidiaries, directors, officers, employees, subcontractors and service from and against any losses, liabilities, damages, costs and expenses (including without limitation reasonable attorneys' fees) arising from or relating to (a) death, personal injury, bodily injury or property damage caused by Client's customers or clients or Client Equipment; (b) breach of Client's representations, warranties, or covenants in the Agreement as set forth in Article 6 of the Agreement; (c) any claim made by or on behalf of Client's customers or clients; (d) Client's or Client's customers' or clients' loss of the Agreement's functionality; Services; or Client Equipment; (e) any claim whatsoever by Client's customers or clients, or any third party related to the Services or Client Equipment; (f) any change in, or interpretation or administration of, any laws, regulations, statutes, treaties, rules, practices, standards, codes or other applicable regulatory requirements; (g) any claims, suits, actions, lawsuits, or disputes brought by or on behalf of any third parties or any non-associated software or hardware in connection with the foregoing; or (h) Client's installation or use of any non-associated software or hardware in connection with the foregoing.

#### 4. CONFIDENTIAL INFORMATION

[illegible]

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[illegible]

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# ORDER #2: DEPLOYMENT SCHEDULE

Client Equipment hosted**:	Deployment Month	Quantity & Type of Unit (the “Units”)	Assumed power consumption per Unit (KWh):
	OCT 2021	100 S19 or equivalent	3.255
	NOV 2021	100 S19 or equivalent	3.255
	DEC 2021	100 S19 or equivalent	3.255
	JAN 2022	100 S19 or equivalent	3.255
	FEB 2022	100 S19 or equivalent	3.255
	MAR 2022	2,500 S19 or equivalent	3.255
	APR 2022	5,000 S19 or equivalent	3.255
	MAY 2022	7,500 S19 or equivalent	3.255
	JUN 2022	10,000 S19 or equivalent	3.255
	JUL 2022	10,000 S19 or equivalent	3.255
	AUG 2022	10,000 S19 or equivalent	3.255
	SEP 2022	10,000 S19 or equivalent	3.255
	OCT 2022	10,000 S19 or equivalent	3.255
	NOV 2022	4,500 S19 or equivalent	3.255
Hosting-Services Rate:	USD \$0.06175/ KWh; USD \$.06/KWh after hosting month 30		

## MASTER SERVICES AGREEMENT (ORDERS)

The Order, including the terms and conditions hereunder, incorporates by reference the terms of the Master Service Agreement dated as of September 15, 2011 between the Company and the Client, which is hereby incorporated by reference into this Order. The Client hereby agrees to be bound by all terms and conditions of the Master Service Agreement with respect to the Order. Capitalized terms that are not defined in the Order shall have the same meaning as in the Master Service Agreement.

**Cancellation:** On or before October 24, 2011, the Client may cancel this Order, terminating all services beginning with October 15, 2011 and November 15, 2011, respectively.

**Expiry:** This Order shall expire on October 24, 2011.

**Client's Payment Obligations:**

Expiry Date	Expiry Amount	Quantity & Type of Units	Amount for the Order
10/24/2011	\$1,000.00	1000 USDC	\$1,000.00
11/15/2011	\$1,000.00	1000 USDC	\$1,000.00
12/15/2011	\$1,000.00	1000 USDC	\$1,000.00
1/15/2012	\$1,000.00	1000 USDC	\$1,000.00
2/15/2012	\$1,000.00	1000 USDC	\$1,000.00
3/15/2012	\$1,000.00	1000 USDC	\$1,000.00
4/15/2012	\$1,000.00	1000 USDC	\$1,000.00
5/15/2012	\$1,000.00	1000 USDC	\$1,000.00
6/15/2012	\$1,000.00	1000 USDC	\$1,000.00
7/15/2012	\$1,000.00	1000 USDC	\$1,000.00
8/15/2012	\$1,000.00	1000 USDC	\$1,000.00
9/15/2012	\$1,000.00	1000 USDC	\$1,000.00
10/15/2012	\$1,000.00	1000 USDC	\$1,000.00
11/15/2012	\$1,000.00	1000 USDC	\$1,000.00
12/15/2012	\$1,000.00	1000 USDC	\$1,000.00
1/15/2013	\$1,000.00	1000 USDC	\$1,000.00
2/15/2013	\$1,000.00	1000 USDC	\$1,000.00
3/15/2013	\$1,000.00	1000 USDC	\$1,000.00
4/15/2013	\$1,000.00	1000 USDC	\$1,000.00
5/15/2013	\$1,000.00	1000 USDC	\$1,000.00
6/15/2013	\$1,000.00	1000 USDC	\$1,000.00
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8/15/2013	\$1,000.00	1000 USDC	\$1,000.00
9/15/2013	\$1,000.00	1000 USDC	\$1,000.00
10/15/2013	\$1,000.00	1000 USDC	\$1,000.00
11/15/2013	\$1,000.00	1000 USDC	\$1,000.00
12/15/2013	\$1,000.00	1000 USDC	\$1,000.00
1/15/2014	\$1,000.00	1000 USDC	\$1,000.00
2/15/2014	\$1,000.00	1000 USDC	\$1,000.00
3/15/2014	\$1,000.00	1000 USDC	\$1,000.00
4/15/2014	\$1,000.00	1000 USDC	\$1,000.00
5/15/2014	\$1,000.00	1000 USDC	\$1,000.00
6/15/2014	\$1,000.00	1000 USDC	\$1,000.00
7/15/2014	\$1,000.00	1000 USDC	\$1,000.00
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3/15/2016	\$1,000.00	1000 USDC	\$1,000.00
4/15/2016	\$1,000.00	1000 USDC	\$1,000.00
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1/15/2023	\$1,000.00	1000 USDC	\$1,000.00
2/15/2023	\$1,000.00	1000 USDC	\$1,000.00
3/15/2023	\$1,000.00	1000 USDC	\$1,000.00
4/15/2023	\$1,000.00	1000 USDC	\$1,000.00
5/15/2023	\$1,000.00	1000 USDC	\$1,000.00
6/15/2023	\$1,000.00	1000 USDC	\$1,000.00
7/15/2023	\$1,000.00	1000 USDC	\$1,000.00
8/15/2023	\$1,000.00	1000 USDC	\$1,000.00
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1/15/2024	\$1,000.00	1000 USDC	\$1,000.00
2/15/2024	\$1,000.00	1000 USDC	\$1,000.00
3/15/2024	\$1,000.00	1000 USDC	\$1,000.00
4/15/2024	\$1,000.00	1000 USDC	\$1,000.00
5/15/2024	\$1,000.00	1000 USDC	\$1,000.00
6/15/2024	\$1,000.00	1000 USDC	\$1,000.00
7/15/2024	\$1,000.00	1000 USDC	\$1,000.00
8/15/2024	\$1,000.00	1000 USDC	\$1,000.00
9/15/2024	\$1,000.00	1000 USDC	\$1,000.00
10/15/2024	\$1,000.00	1000 USDC	\$1,000.00
11/15/2024	\$1,000.00	1000 USDC	\$1,000.00
12/15/2024	\$1,000.00	1000 USDC	\$1,000.00
1/15/2025	\$1,000.00	1000 USDC	\$1,000.00
2/15/2025	\$1,000.00	1000 USDC	\$1,000.00
3/15/2025	\$1,000.00	1000 USDC	\$1,000.00
4/15/2025	\$1,000.00	1000 USDC	\$1,000.00
5/15/2025	\$1,000.00	1000 USDC	\$1,000.00
6/15/2025	\$1,000.00	1000 USDC	\$1,000.00
7/15/2025	\$1,000.00	1000 USDC	\$1,000.00
8/15/2025	\$1,000.00	1000 USDC	\$1,000.00
9/15/2025	\$1,000.00	1000 USDC	\$1,000.00
10/15/2025	\$1,000.00	1000 USDC	\$1,000.00
11/15/2025	\$1,000.00	1000 USDC	\$1,000.00
12/15/2025	\$1,000.00	1000 USDC	\$1,000.00
1/15/2026	\$1,000.00	1000 USDC	\$1,000.00
2/15/2026	\$1,000.00	1000 USDC	\$1,000.00
3/15/2026	\$1,000.00	1000 USDC	\$1,000.00
4/15/2026	\$1,000.00	1000 USDC	\$1,000.00
5/15/2026	\$1,000.00	1000 USDC	\$1,000.00
6/15/2026	\$1,000.00	1000 USDC	\$1,000.00
7/15/2026	\$1,000.00	1000 USDC	\$1,000.00
8/15/2026	\$1,000.00	1000 USDC	\$1,000.00
9/15/2026	\$1,000.00	1000 USDC	\$1,000.00
10/15/2026	\$1,000.00	1000 USDC	\$1,000.00
11/15/2026	\$1,000.00	1000 USDC	\$1,000.00
12/15/2026	\$1,000.00	1000 USDC	\$1,000.00
1/15/2027	\$1,000.00	1000 USDC	\$1,000.00
2/15/2027	\$1,000.00	1000 USDC	\$1,000.00
3/15/2027	\$1,000.00	1000 USDC	\$1,000.00
4/15/2027	\$1,000.00	1000 USDC	\$1,000.00
5/15/2027	\$1,000.00	1000 USDC	\$1,000.00
6/15/2027	\$1,000.00	1000 USDC	\$1,000.00
7/15/2027	\$1,000.00	1000 USDC	\$1,000.00
8/15/2027	\$1,000.00	1000 USDC	\$1,000.00
9/15/2027	\$1,000.00	1000 USDC	\$1,000.00
10/15/2027	\$1,000.00	1000 USDC	\$1,000.00
11/15/2027	\$1,000.00	1000 USDC	\$1,000.00
12/15/2027	\$1,000.00	1000 USDC	\$1,000.00
1/15/2028	\$1,000.00	1000 USDC	\$1,000.00
2/15/2028	\$1,000.00	1000 USDC	\$1,000.00
3/15/2028	\$1,000.00	1000 USDC	\$1,000.00
4/15/2028	\$1,000.00	1000 USDC	\$1,000.00
5/15/2028	\$1,000.00	1000 USDC	\$1,000.00
6/15/2028	\$1,000.00	1000 USDC	\$1,000.00
7/15/2028	\$1,000.00	1000 USDC	\$1,000.00
8/15/2028	\$1,000.00	1000 USDC	\$1,000.00
9/15/2028	\$1,000.00	1000 USDC	\$1,000.00
10/15/2028	\$1,000.00	1000 USDC	\$1,000.00
11/15/2028	\$1,000.00	1000 USDC	\$1,000.00
12/15/2028	\$1,000.00	1000 USDC	\$1,000.00
1/15/2029	\$1,000.00	1000 USDC	\$1,000.00
2/15/2029	\$1,000.00		



# ORDER #2: PAYMENT SCHEDULE

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## Payment Due Prior to Installation:

### USD \$15,575,025.00 on or before October 12, 2021 consisting of:

- \$73,350.00, 100% of the prepayment for hosting services for OCT 2021 Units to be applied as a credit against future monthly invoices as they become due.
- \$205,380.00, 70% of the prepayment for hosting services for NOV 2021 – FEB 2022 Units to be applied as a credit against future monthly invoices as they become due.
- \$15,296,295.00, 30% of the prepayment for hosting services for MAR 2022 – NOV 2022 Units (\$550,230.00 for MAR 2022: \$1,100,460.00 for APR 2022: \$1,650,675.00 for MAY 2022: \$2,200,905 for each of JUN 2022, JUL 2022, AUG 2022, SEP 2022, OCT 2022: and \$990,405.00 for NOV Units) to be applied as a credit against future monthly invoices as they become due.

### USD \$755,645.00 on or before October 12, 2021 consisting of:

- \$733,640.00, 40% of the prepayment for hosting services for MAR 2022 Units to be applied as a credit against future monthly invoices as they become due.
- \$22,005.00, 30% of the prepayment for hosting services for NOV 2021 Units to be applied as a credit against future monthly invoices as they become due.

installation of the Miners, also pursuant to a set schedule set out in Order #2. In total, according to Core's records, Gryphon made payments to Core totaling \$35,264,413.57, pursuant to the fee schedule set forth in Order #2 for the hosting services. Core's banking records reflect that for

Developer Version: 0.11.00001-0001-0000-0000-00000000

#### MASTER SERVICES AGREEMENT ORDER #2

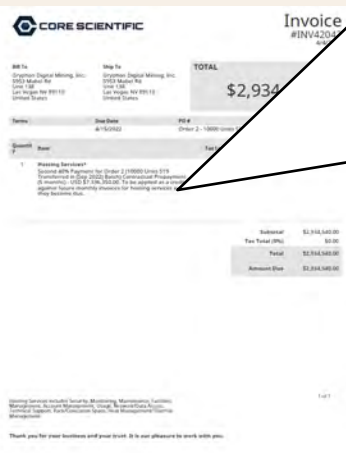
This Order, including the terms and conditions hereinafter, supplements to and modifies the Master Services Agreement dated as of September 22, 2021 (the "Agreement") between Core and Gryphon. The terms and conditions of this Order control over the terms and conditions of the Agreement. The terms and conditions of this Order shall govern with respect to the Order. Capitalized terms used but not defined in this Order shall have the meanings ascribed in the Agreement.

Commitment Date:	As of September 15, 2021 and then the 15th day of each month beginning with October 15, 2021 and November 15, 2021.
Facility:	Core's Facility as determined by Core.
Core Equipment Installed:	
Payment Month:	Quantity & Type of Units (the "Units")
OCT 2021	100,000 units
NOV 2021	100,000 units
DEC 2021	100,000 units
JAN 2022	100,000 units
FEB 2022	100,000 units
MAR 2022	100,000 units
APR 2022	100,000 units
MAY 2022	100,000 units
JUN 2022	100,000 units
JUL 2022	100,000 units
AUG 2022	100,000 units
SEP 2022	100,000 units
OCT 2022	100,000 units
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JUL 2057	100,000 units
AUG 2057	100,000 units
SEP 2057	100,000 units
OCT 2057	100,000 units
NOV 2057	100,000 units
DEC 2057	100,000 units

Terms	Due Date	PO #	Sales Rep
	4/15/2022	Order 2 - 10000 Units S19	

Quantity	Item	Tax Location	Tax Rate	Amount
1	<b>Hosting Services*</b> Second 40% Payment for Order 2 (10000 Units S19 Transferred in (Sep 2022) Batch) Contractual Prepayment (5 months) - USD \$7,336,350.00. To be applied as a credit against future monthly invoices for hosting services as they become due.		0%	\$2,934,540.00

<b>Subtotal</b>	\$2,934,540.00
<b>Tax Total (0%)</b>	\$0.00
<b>Total</b>	\$2,934,540.00
<b>Amount Due</b>	\$2,934,540.00



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# PROVISIONS MENTIONING FEES

## IN MSA & ORDER #2

### 3. PAYMENT TERMS AND TAXES

a. Company will invoice Client monthly in advance for all applicable fees for use of Company Facility and provision of Services as set forth in the applicable Order. Client will pay all invoiced amounts in US dollars within ten (10) calendar days of the date of the invoice. All payments must be (i) in US dollars into an ACH account number as set forth in the applicable Order; or (ii) to another account or form of payment directed by Company. Interest shall be charged on past due amounts at the lesser of (A) one and a half percent (1.5%) per month; or (B) the highest rate permitted by applicable law.

d. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT,

COMPANY'S TOTAL LIABILITY TO CLIENT IN THE AGGREGATE FOR THE ENTIRE TERM (REGARDLESS OF WHETHER THE CLAIMS ARE BROUGHT DURING OR AFTER THE TERM) WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) WILL NOT EXCEED AN AMOUNT EQUAL TO ONE (1) MONTHS FEE PAYABLE TO COMPANY PURSUANT TO THE APPLICABLE ORDER.

**Fees.** Client shall pay the fees provided for in this Order. The Fees for Services will be determined initially by reference to the Assumed power consumption per Unit of each deployed Unit, multiplied by the Hosting-Services Rate (each as set forth above in this Order). Subsequent invoices will contain any additional charges incurred by Client and adjustments resulting from any differences between the Fees for Services invoiced in the preceding month and the Fee for Services based on Company's determination of power utilized by Client during that month, as well as any adjustments to Company's estimate of power to be utilized by Client in the upcoming month. Fees for Services for each month shall be paid in advance, in accordance with Section 3 of the Agreement.

# THE ABSENCE OF DISCOVERY DEFEATS CORE'S MOTION





# CORE'S RULE 56(D) CASES ARE DISTINGUISHABLE

“We begin our analysis by pointing out that this case had been pending for over fifteen months....The record indicates that [plaintiff] had reviewed over half a million FMC documents and had also subpoenaed documents from twenty municipal airport authorities. It had also conducted several depositions.”

*Stearns Airport Equip. Co. v. FMC Corp.*, 170 F.3d 518, 535 (5th Cir. 1999)

“[Claimant] failed to diligently pursue further discovery during the two-month continuance the district court provided.... She had the benefit of nearly 1,000 pages of deposition testimony and records.”

*Dominick v. Mayorkas*, 52 F.4th 992, 995–96 (5th Cir. 2022)

“Although Plaintiffs argued in the district court that discovery was not complete, they failed to file a motion for continuance under Rule 56(d) or otherwise specify what discovery was necessary to produce evidence on a material issue. . . . But even if Plaintiffs had filed the proper motion, the district court had sound reasons for not delaying a ruling by allowing further discovery. The time provided for discovery was ample.”

*Bishop v. City of Galveston*, 595 F. App'x 372, 377 (5th Cir. 2014)